



LOUISIANA PUBLIC DEFENDER BOARD MEMO

To: The Board
From: Jean M. Faria
Re: Report of the State Public Defender
Date: April 19, 2010

BUDGET

Freezes and Cuts:

In accordance with Executive Order No. BJ 2009-11, LPDB is subject to both the hiring freeze and the spending freeze. Pursuant to this Order, staff was instructed to prepare a BA-7 (Budget Adjustment) decreasing the budget by \$96,350. Our "T.O." (Table of Organization) of 16 staff members is static. There will be no layoffs. Restrictions apply to all expenditures which are now limited to essential services only, through June 30, 2010.

A further cut of \$757,732 may be required before June 30, 2010. Staff will receive additional instructions from the Division after the Revenue Estimating Committee (REC) meeting held April 14, 2010. State revenues are lower than anticipated and a cut of at least \$400,000 appears likely. All executive branch agencies receiving monies from the general fund are experiencing the same funding cuts. Should the larger cut be imposed, staff recommends use of a portion of the funds reserved for district emergencies. The Office of Planning and Budget advised staff that a more modest cut of \$42,084 is still possible. In that event, LPDB would recoup some of the \$96,350 cut previously taken.

House Bill 1, containing next fiscal year's budget, has not cleared House Appropriations at this time. To date, the Governor's budget includes an increase of \$6.7 million for LPDB.

Parent Representation:

Last month, LPDB submitted a BA-7 request to transfer \$154,175 from the Department of Social Services to LPDB for costs associated with parent representation in child in need of care (CINC) cases. When the Revenue Estimating Committee warned the Legislature that its projected revenue estimate may be approximately \$400 million short, all BA-7s were postponed. In order to cover the shortfall of \$154,175 to the affected districts, LPDB funds were used in lieu of the anticipated DSS funds from the BA-7. The LPDB BA-7 remains outstanding, in case the Division places it back on the May or June agenda.

Overhead:

The Budget Committee met on April 7, 2010 and discussed the overhead issue at length. The Budget Committee looked at the amount of overhead being submitted for payment for each of the districts requesting reimbursement. Ms. LeDoux directed staff to create a 10 slide

presentation on existing overhead payments for presentation to the Legislature. In light of the wide range of factual circumstances among the 42 judicial districts, the Committee determined that no reasonable uniform formula could be developed and applied to each district. Given the time and effort already invested in numerous requests for information, the Budget Committee determined staff does not have the current capacity to do additional follow up.

The Budget Committee looked at the amount of overhead being submitted for payment for each of the districts requesting reimbursement and voted to use total compensation as a basis of payment to the District Defenders. Ms. LeDoux instructed staff to draw up a resolution requiring the District Defenders to submit either documentation proving the overhead payments authorized by the defunct indigent defender board or an approved affidavit form developed by staff, listing the District Defender's salary and benefits in place on January 1, 2007, pursuant to R.S. 15:161(H)(2).

With guidance from the both civil service and state Attorney General's office pay scales, staff was instructed to develop minimum, median and maximum salary limits for the District Defenders. Staff was instructed to submit these salary ranges to the Policy Committee for approval prior to the Board's April meeting. If approved, the information will be presented to the Board for discussion at the April meeting,

District 28 Shortfall:

A request for emergency funding for District 28 (LaSalle Parish) was reviewed and discussed. Based on the information contained in the Emergency Distribution letter and spreadsheet submitted, the District fund will be depleted by the end of April, 2010. The District needs \$100,000 in additional funding to continue delivering services through the end of this fiscal year. This application will be submitted to the Board for its vote on whether to approve the request.

Capital Contracts:

Executive directors of two of the 501(c)(3) non-profit contract programs appeared before the Budget Committee to discuss changes to the capital contracts. Mr. Richard Bourke of the Louisiana Capital Assistance Center and Ms. Sarah Ottinger of the Capital Appeals Project discussed the need for clarification as to the description of the scope of the services each program provides and the manner in which the contract compensates the program for those services. After a thorough presentation, the Budget Committee instructed staff to work with the capital program directors to carefully and precisely capture the work done by each program and the manner in which contract funds are expended.

CAPITAL DIVISION

The Capital Division has reviewed and approved numerous requests for expert funding in ongoing capital cases, and has approved vouchers for quick payment in cases where previous approval was granted.

A posting for soliciting applications for the Board approved position of Capital Case Coordinator was prepared and disseminated through several state and national list serves.

Meetings were conducted with all the capital contract panels with a view toward assessing possible changes in responsibilities and budgets in the upcoming fiscal year.

COMPLIANCE DIVISION

Compliance has been focused on problems in Orleans involving caseloads and resistance by judges to changes in the allotment procedure which would make case management easier for the OPD, as well as the DA and the court. Other issues that have arisen are continuing problems in the 14th JDC, and the final push toward implementing the statutory requirement that the Board enter into contracts with the local District Defenders.

A number of complaints from clients in the field were reviewed and forwarded to the appropriate first responders.

Compliance participated in various meetings, including one of the Budget Committee, to discuss and propose solutions and guidelines for responding to the field concerning payment of overhead in districts where District Defenders operate public defender functions out of their private offices

JUVENILE DIVISION

Since the March 15, 2010 Board meeting, Juvenile Division staff has been available to members of the Louisiana Legislature to answer questions concerning pre-filed legislation. These bills deal with the presumption of indigence for juveniles, juvenile confessions, the use of mental health information in juvenile adjudications, and other juvenile law issues. Staff met with members of the House and Senate to provide information as requested. Juvenile staff attended the House Committee on Administration of Criminal Justice meeting on March 31st and was available to provide information to the Committee. Staff was also available at the House floor debate of the mental health bill on April 7th, when that bill passed the House unanimously. Juvenile staff is monitoring bills that deal with juvenile law on an ongoing basis.

Staff attended the following: Legislative Task Force for Child Protection Cases on March 17th, where staff continued to facilitate the transition to parent representation in all districts; Juvenile Law Symposium at LSU on March 19th; LSBA Children's Law Committee on March 24th; Career Services Centers at LSU Law and Southern Law, to deliver internship applications on March 25th; and Legislative Task Force for Child Protection Cases Implementation Subcommittee on April 1st.

The Juvenile Defender Advisory Committee (JDAC) met on April 16th in Opelousas. Among other topics, the JDAC reviewed a final draft of the proposed Child in Need of Care performance standards.

Juvenile staff was involved in the filing of amicus briefs to the Louisiana Supreme Court supporting the Louisiana First Circuit's decision to keep the child in juvenile court for the competency examination. *See State in the Interest of T.C.*, 09-1852 (La.App. 1 Cir. 02/12/10); 2010 La. App. LEXIS 231. The Louisiana Supreme Court refused to consider the District Attorney's position.

The MacArthur Foundation's Models for Change project is developing protocols for juvenile delinquency cases in the 4th JDC. Juvenile staff has been in contact with juvenile defenders as well as MacArthur personnel in the 4th JDC. A meeting is scheduled for April 28th in Monroe to discuss the development of these protocols. Juvenile staff will be in attendance.

The Southern Juvenile Defender Center has established an Amicus Committee for the seven Southeastern states covered by SJDC (SC, NC, GA, AL, FL, MS, LA). Juvenile staff took part in a conference call on April 14th to establish procedures for the submission of amicus briefs. There will be quarterly conference calls hosted by the SJDC.

Finally, juvenile staff submitted a Juvenile Division Strategic Plan, outlining strategies over the next five years. Juvenile staff was also active in creating divisional strategic plans with the Training, Compliance and Agency Development Divisions.

TRAINING

On April 10, 2010 Part II of the trial skills pilot project training was conducted. Thirty-four public defenders attended. Faculty included Phyllis Mann, Pamela Smart, Richard Schroeder, and Walt Sanchez. Using a mock fact pattern, the participants worked on evidentiary issues and opening statements. Part III is being developed and will be held on June 19, 2010.

Upcoming trainings in the next few weeks include *Litigating Mental Retardation and Fetal Alcohol Spectrum Disorders* (April 22-23, 2010 / Baton Rouge); *Preliminary Hearings – A Refresher* (April 29, 2010 – Houma); and *Leadership Training* (May 1, 2010 / CPCPL).

The Training Division continues to make preparations for the Capital Defender Trainings scheduled for June 24-26, 2010 in New Orleans and March 24-26, 2011 in Shreveport, as well as the Capital Certification Seminar in Lafayette set for October 21-22, 2010. A joint capital defender and prosecutor training is also being planned, along with two prosecutor trainings, provided with the CCLI grant from the Bureau of Justice Assistance.

In connection with the Director of Juvenile Defender Services, a series of juvenile skills workshops are being developed. The Training Division is also creating a training for public defenders on the Trial Court Performance Standards to be conducted Fall 2010 and Spring 2011. Plans for the Defender Training Institute (DTI) 2010 are coming together to provide an intense 7-day skills course for new public defenders. The first annual DTI is scheduled for September 12-18, 2010.

SPECIAL PROJECTS

Special Projects Advisor Hall has been working on the following projects since the last Board Meeting: supporting communication between the Assistant Defender Liaisons, facilitating the second meeting of the Assistant Defender Advisory Council (March 26) and undertaking appropriate follow-up; continuing to populate the public LPDB website and develop the LPDB password-protected Board Member website; moderating the LPDB investigators listserv; moderating the LPDB-NJDC juvenile defenders listserv; working with the Louisiana Bar Foundation for the video presentation that accompanied the presentation of the 2009 Calogero Justice Award to LPDB at the LBF Annual Gala (April 9); soliciting and writing content (including defender features) from public defenders and support staff across the state for bi-monthly electronic circulation; providing technical support and grant reporting to the Defender Services Program in Plaquemines Parish; working with NJDC, national faculty and District Defender Tony Champagne to provide the final NJDC supported regional juvenile defender training (on July 9, 2010 in Houma, LA); working with Director of Training Kilborn to develop materials and manage logistics of the Capital Case Litigation Initiative Training (June 24-26, New Orleans, LA) and the Cultural Competency Training (July 30, Alexandria, LA); working

with Dr. Katherine Mattes (Criminal Clinic, Tulane University School of Law) to publish and promote training materials related to competency and 'not guilty by reason of insanity' (NGRI) materials to the field; ensuring compliance with grant reporting requirements of the CCLI and LCLE grants awarded to LPDB; contributing as an active member on the Language Access Coalition to promote the need for interpreter standards in criminal and civil courts, and; initiating the LPDB Internship Program in all four law schools (including District Defender outreach, coordination with career centers, support for applicants and development of standard procedures and compensation requirements).

INFORMATION TECHNOLOGY & MANAGEMENT DIVISION

While working with partial and self reported data, IT constructed an excel database with merges of all individual attorney caseload reports and all district personnel expenditure reports which can calculate case types and costs per case type by attorney and by district and produced a statewide report on cost per case (aggregate) and cost per type of case. This is a very rough and gross process which produced equally rough and gross estimates.

Assuming funding is awarded as stated in the current version of HB 1, ITM staff offered three scenarios for the disbursement of the \$6.7 million supplemental funding.

In preparation for the Budget Committee meeting, staff compiled an Overhead Request database and an analysis of both requested overhead reimbursements and potential requests based on total district monthly expenditures.

At the request of the Budget Committee and preparation for this Board meeting, ITM staff produced an analysis of district defender salaries, criteria for full-time status, salary ranges (± 2 standard deviations from mean) and identified correlated/analogous Civil Service job titles and salary ranges for executive-level attorneys.

Finally, in preparation of an active hurricane season, ITM staff re-confirmed COOP emergency Gmail accounts and coordinated a surprise COOP drill (date TBA).

AWARDS

LPDB was awarded the 2010 Calogero Justice Award by the Louisiana Bar Foundation on April 8, 2010 at the LBF Gala at the Ritz-Carlton in New Orleans. The Calogero Justice Award honors an individual or organization for a significant contribution to the Louisiana justice system. Board members in attendance were: Jim Boren, Leo Hamilton, Christine Lipsey, and Lucy McGough. The award was presented by retired Chief Justice Pascal Calogero to the State Public Defender who received the award on behalf of the Board.

LPDB member Professor Lucy McGough was honored individually by the Louisiana Bar Foundation, as the recipient of the 2010 Distinguished Professor Award. The Award recognizes those individuals who, by reason of his or her professional activities, have distinguished themselves in their chosen profession and have brought credit and honor to the legal profession. Congratulations Professor McGough.

STAFF UPDATE

Natasha George, from our first summer intern class of 2009 has returned. She will be working as a law clerk for the summer.

Congratulations to Sherri Young, who recently gave birth to a daughter on April 13, 2010. Sherrie is a barred attorney working as a paralegal for General Counsel. Sherry will rejoin the staff in 6-8 weeks.

The State Public Defender met with a small group of the newly resuscitated Sentencing Commission to discuss the scope of the work and funding opportunities.

Through the Right to Counsel Committee of the Louisiana State Bar Association, the SPD has been working with LSBA President Kim Boyle, Louisiana Fifth Circuit Court of Appeal Judge Fredericka Wicker and LSBA staff to develop the agenda for the first LSBA Criminal Justice Summit. The Summit is set for Monday, May 10, 2010 in Baton Rouge. The purpose of the summit is to bring together all members of the criminal justice community to discuss issues and challenges the system now faces.